TOWN OF CHESTERFIELD, NH ZONING BOARD OF ADJUSTMENT

MINUTES December 11, 2012

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternates Lucky Evans, Kristin McKeon and Code Enforcement Officer Chet Greenwood

The Zoning Board of Adjustment met at the Chesterfield Town Office on December 11, 2012. Riendeau explained the process of the meeting. The voting members will be Cay, Davenport, Perkowski, Fales and Riendeau.

1. Richard & Jeanny Aldrich appeal the Administrative Decision of the Code Enforcement Officer's decision requiring a driveway permit under Building Code Article 16:03: Driveway Permits. The property is located at 89 Winchester Rd, Chesterfield (Map 16 Lot C19) Rural/Agricultural zone. This is a rehearing of the Administrative Appeal.

Aldrich asked if the Board had gotten input from the attorney. Riendeau stated they did. Greenwood was called upon to give the information. Greenwood cited 236:13 "...the planning board has jurisdiction of the adequacy and safety of every existing driveway, entrance, exit, and approach to a highway".

Aldrich stated he had hoped the attorney would have given a different answer. He stated that this is an agricultural use and is exempt according to the Land Development regulations. Riendeau stated that Aldrich is getting confused between the 2 Boards. The Land Development regulations are used by the Planning Board and note that agricultural uses are exempt from site plan review but not from the Town's ordinances. Aldrich would not have to go to the Planning Board for site plan review unless he expanded his agricultural operation by a large amount.

Aldrich stated that Greenwood used Article 16:03 to require a driveway permit and that ordinance pertains to new driveways. This is an existing driveway. Aldrich also stated that Greenwood called the driveway residential but it is an agricultural driveway going to an agricultural farm stand.

Riendeau stated the driveway was expanded and improved to access the farm stand. Aldrich stated that when he bought the farm he was expecting to be able to farm; that use is being denied because he can't use the driveway. Riendeau stated that the Board has not denied the use but wants the driveway to be safe. Aldrich gave a packet with various ordinances that he was referencing. He stated that 674:32-b is not a regulation but direction on how to enact rules. Ross advised that the LGC Attorney noted it as a statute. Cay agreed that it was a statute.

Aldrich cited 672:1 that "agricultural uses shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers." He stated that the driveway has existed for many years before zoning was established. Aldrich stated that the Land Development regulation 203.3C exempts agricultural uses as defined in RSA 21:34 which state the driveway and the farm stand are agricultural use.

Riendeau stated to be clear, the ZBA uses the Building and Zoning codes. The Land Development regulations are for the Planning Board for site development. Riendeau asked Aldrich what he wants to hang his hat on; 16:03? Jeanny Aldrich stated that it is important that the Board knows they have looked at all ordinances and they want it in the record in the event this goes to court.

Richard Aldrich stated they didn't push the use of the farm stand while this has occurred. Riendeau asked if they had access to the lot. Aldrich stated there is the driveway to the house. The original farm stand location used the house driveway. When he was denied the variance for the farm stand to be in the front setback they moved it. As it exists now the farm stand was put in a compliant location. Aldrich stated the driveway in question was used to access the farm and a garden that used to be there. McKeon stated this is the best for range of site to access the lot. Jeanny Aldrich asked what the difference was between picking up hay in a field and getting vegetables from a farm stand.

Riendeau stated that the LGC attorney cites 236:13 as regulation that gives jurisdiction over the adequacy and safety of existing driveways. Perkowski read 674:32-b II "Any new establishment, reestablishment after disuse, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, may be made subject to applicable special exception, building permit or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety." The access was used but it has been expanded to access a farm stand. Perkowski stated we are trying to help you do what you want and do it according to the regulations.

Riendeau asked why they were denied a driveway permit in 2011. He stated the permit was denied because it went along the front setback and not the way the driveway entered the lot. Aldrich stated that 16:03 says "may" go through and not "must". Riendeau stated what the intent of the rule is; and that is to keep the driveway from running along the front setback.

J Aldrich stated the access to the farm stand is to make it reasonable to use. When asked why they couldn't put the connector drive back so that it was outside of the front setback Aldrich stated there are trees and gardens that would be disturbed.

R Aldrich stated that 672:1 III-b says agricultural uses should not be unreasonably limited. Aldrich stated the Board should be helping us. Riendeau stated this is an appeal from the administrative decision of the Code Enforcement Officer. The simple answer is to apply for a driveway permit. If it can't be made conforming then ask for relief.

Barbara Girs stated that Walker Farm from Dummerston couldn't operate their business as they do if they were in town. The cars back out of the driveway onto the road. Davenport stated there have been several accidents because of that and she had observed one. Girs stated that Winchester St is a dead end road. We should be making agricultural uses easier to do. We need to encourage farming because they save towns money. Riendeau explained the process of zoning changes. The Board gives relief where and when it makes sense. Jeff Scott stated he agrees with Girs. Donahue has been approved for a subdivision on 63 and it's a mess. J Aldrich asked that the Board look at their ability to farm and that they use the word "may" in 16:03 to interpret that the permit isn't needed. She asked if the Board is familiar with the site. Riendeau stated that his great grandfather had

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owned all the property down there including the Aldrich and Mitchell properties and he is very familiar with it.

Perkowski moved to close the public portion. Fales seconded the motion; which carried unanimously.

Discussion

Riendeau stated that the Board is ruling on the Administrative Decision. Did Greenwood make the correct decision in requiring a driveway permit? It was noted that Paul Sanderson, LGC attorney, cites 236:13 which gives the Planning Board jurisdiction over all accesses from town roads. The Board believes it was Greenwood's interpretation that the access was a bar-way access to the farm and not a driveway; that is why he cited 16:03. Article 672:1 III-b states that Board not place unreasonable limitations on agricultural uses. We are not limiting his farming.

Perkowski noted that Article 201.3C last paragraph states, "Nothing contained in the above paragraphs shall be construed to exempt farming and agricultural uses from the building ordinance and the applicable area, coverage, setback, and yard requirements of the Zoning Ordinance."

McKeon stated that the Board is determining that the number of people going through the entrance does not encourage agriculture. If we require a permit for this we will also need to require permits for many other accesses to fields that sell hay. She asked if there was a substantial change to the driveway. Riendeau stated yes, it was changed for that use, to access the new farm stand. Aldrich had that access to the field, when he changed it to access the farm stand the impact changed.

Riendeau asked Ross if Greenwood knew that Aldrich had been turned down by the Road Agent for a driveway permit. Ross stated that information is in the property file and she expects that he did know.

Davenport stated that in the research she has done a farm stand is agricultural so you look at the driveway as a piece of the agriculture use.

Cay stated the access is a pre-existing use, an access of limited nature. In 2009 the use changed when they put in the farm stand. This is a different use. He grew up on that street and there wasn't a farm stand then. Having an agricultural use doesn't get you carte blanch; it is subject to the ordinances. You don't get a free pass. Is it subject to 16:03; a broad reading is it is a new access with a new use. A narrow reading is that it was an existing access. 674:32-b notes requirements for a change; is the driveway access adequate for public safety. Perkowski sees it as a change/expansion.

Riendeau stated the applicant did go to Bevis for a permit for a new driveway and it was denied because it had a connector in the front setback. The farm stand access is agricultural but it has been changed and expanded and comes under review by the town.

Cay moves to uphold the Code Enforcement Officer's decision. We find that in accordance with 16:03 that the use there at the property does constitute an increased expansion of use for access to the property; since the farm stand has existed for only 2 years for the sale of produce. It is

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uncontested that prior to 2009 there was access to the property through that stone wall area that was used for tractors, friends' vehicle parking or access to gardens but it was not used for a farm stand or sale of produce on the property.

There are other statutes to point to, that give us direction in making a determination that a driveway permit would be required; specifically 674:32-b II addresses the issue of a new establishment, reestablishment after disuse, or significant expansion of a farm stand. We find that statute is applicable here and specifically says that local land use board approval may be required. 236:13 also specifically addresses the jurisdiction of land use boards over existing driveway uses. We find there is sufficient evidence that suggests that this instance should receive a driveway permit and therefore we uphold Greenwood's decision.

Discussion

Perkowski stated we should get the Building Inspector, the Road Agent and the owner together to see if it could meet ordinances or have him come in for a variance. Can we give that direction? Cay stated it is up to the applicant. Reasonable people can come to an agreement. He stated the spirit and intent is clear. Greenwood as the Building Inspector would cite 16:03 and doesn't think he was wrong in citing that.

The vote was called.

Fales seconded the motion; which carried by majority vote. (4-Yes: Perkowski, Fales, Cay, Riendeau 1-No: Davenport)

2. Anthony Souza requests Variances from Articles 204.5 Section A, Front Setback and 503.1 Expansion of Non-Conforming Buildings. The property is located at 518 Route 9, West Chesterfield (Map 13 Lot D8) Rural/Agricultural zone

Souza brought pictures to the attention of the Board. The pictures showed a flat roof. He stated he has a permit to tear down the roof but wanted to make it one continuous roof line. This would help with the problem of snow building up on the roof and then because of the metal roof it falls down onto the stairs.

Souza stated the existing footprint is 1,414 sq ft. By taking out the concrete steps he would be reducing the sq footage and would be moving the steps back 2 ft from the front setback. He advised that the volume would increase by 9%. Souza stated the house was there before the Route 9 taking for widening the highway and that is why he is so close to the front. The State gave him permission to change his driveway if he bought land from them but the cost was too high.

Souza advised that the variance would give him storage, make the steps closer to the house with the roof extending over them to keep the snow off and it would close in the corner for one continuous roof. The peak would stay at the same height and would extend across the width of the house. He stated the house is 60 ft from the edge of Route 9.

Souza stated having a flat roof in New England is not a good situation. The water has rotted the sills. The storage will not be heated except residually.

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Dave Smith stated he is in favor of the application. Route 9 has been renovated a few times and it keeps taking land in those front setback areas. The hardship is from the State changing Route 9. Souza stated he did go to visit all his abutters and no one had a problem with his request.

Evans stated this sounds like a safer situation and it makes it more compliant to the setback.

Fales moved to close the public portion. Davenport seconded the motion; which carried unanimously.

Fales moved to approve the Variances requested by Anthony Souza for 503.1, Expansion of a Non-Conforming Building and 204.5 Section A, Front Setback.

Criteria for approval:

- The variance is not contrary to the public interest. Yes, the house is up well away from Route 9 even though it is within the setback. There is no impact to the traffic flow.
- The variance will not be contrary to the spirit and intent of the ordinance. Yes, renovations will make the roof safer and will extend the life of the house without the rot he is experiencing with the multiple roof lines. The house will look better. He is not expanding it a lot; the coverage is actually going down by 9% and the cubic foot expansion is increasing by 9%.
- > Substantial justice is done. Yes, the roof line will eliminate the many problems that he has had.
- The variance will not diminish the values of surrounding properties. Yes, because the look of the house is improving.
- > Literal enforcement of the ordinance would result in unnecessary hardship.
- (A) Because of the special conditions of the property that distinguish it from other properties in the area:
- (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. Yes, this property had more of a setback from Route 9 before Route 9 was expanded. He is also on a steep vertical hill so the topography is a hardship.

 And
 - (b) The proposed use is a reasonable one. Yes

The motion was seconded and carried unanimously.

3. Review November 13, 2012 Meeting Minutes

Perkowski moved to approve the November meeting minutes. Fales seconded the motion; which carried.

4. Other

- Letter from Chet Greenwood, Code Enforcement Officer, to Scott & Cathleen Samson regarding a code violation Ross advised that Samson was in today asking when he could file an application to the Zoning Board. He would be doing it before March 2013.
- Letter from Attorney General's office regarding the denial of the variance for the NH State Liquor Store sign Perkowski asked if the Selectboard were pursuing anything

against the State Liquor Store. Ross advised that Jon McKeon had contacted Senator Molly Kelly. Perkowski read the letter aloud that had been received from the Attorney General's office.

5. Adjourn: The meeting adjourned at 10:15 pm.
Respectfully submitted, Carol Ross Secretary
Approved
Burt Riendeau Chairman, Zoning Board of Adjustment
Burt Riendeau